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MIRKO CANEVARO

## THE TWILIGHT OF NOMOTHESIA: LEGISLATION IN EARLY-HELLENISTIC ATHENS (322-301)<sup>1</sup>

### *Abstract*

The article surveys the evidence for *nomothesia* procedures in the twenty years after the end of the Lamian war. It argues that fourth-century *nomothesia* could not survive the constitutional reforms imposed by Antigonos. Its procedures were later replaced by the individual action of the *nomothetes* Demetrius of Phalerum, who at the same time imposed on the Assembly the check of *nomophylakes* who took over the powers of the *graphe paranomon* and the *graphe nomon me epitedeion theinai*. Finally, after the restoration of democracy in 307, *nomothetai* reappeared for the last time, but were not, like before 322, in charge of voting on new proposals and enacting new legislation. They were special magistrates, possibly introduced by Demetrius Poliorcetes, in charge of proposing new laws to the Assembly for the purpose of reforming the constitution after the regime of Demetrius of Phalerum. After this last appearance of *nomothetai* in the late fourth century, in the third century no recognizable specific *nomothesia* procedure survived, and laws were enacted by the Assembly like decrees. The reason for the disappearance of *nomothesia*, it is argued, must be understood both in the context of the evolution of the relevant institutions, and in that of the abuse of the relevant terminology by Macedonian-controlled regimes at the end of the fourth century.

L'articolo discute le fonti rilevanti per la ricostruzione delle procedure di *nomothesia* nei vent'anni successivi alla guerra Lamiaca e argomenta che la *nomothesia*, nella versione comune nel quarto secolo, non sopravvisse alle riforme costituzionali imposte da Antipatro. Le sue procedure furono dopo il 317 soppiantate dall'azione individuale di Demetrio di Falero, che assunse il ruolo di nomoteta e impose sull'Assemblea il controllo di un gruppo di *nomophylakes* con poteri che un tempo erano stati esercitati attraverso la *graphe paranomon* e la *graphe nomon me epitedeion theinai*. Dopo la restaurazione della democrazia ad opera di Demetrio Poliorcete un gruppo di nomoteti fa capolino per l'ultima volta nelle fonti. Il loro ruolo tuttavia non è quello di approvare le proposte di legge, come avveniva prima del 322, ma quello di proporre nuove leggi all'Assemblea, allo scopo di riformare la costituzione dopo la caduta di Demetrio di Falero. La loro istituzione

1. In writing this article I have incurred many debts: first of all, Edward Harris, P.J. Rhodes and Johannes Bernhardt have gone through versions of the article and provided me with extensive and invaluable feedback. I am also grateful to the audiences of the 3<sup>rd</sup> International Meeting of Young Historians of Ancient Greek Law and of the 4. Darmstädter Diskussionen for lively discussions and interesting suggestions. I also want to thank Shane Wallace and Paschalis Paschidis for sharing with me some of their work and ideas. Finally, I need to thank the Alexander von Humboldt Stiftung for providing me with the time and means to work on this article.

negli ultimi anni del quarto secolo è probabilmente da collegare all'azione esplicita di Demetrio Poliorcete. Dal terzo secolo in poi non c'è alcuna traccia di una procedura separata di *nomothesia*: le leggi vengono probabilmente approvate dall'Assemblea allo stesso modo dei decreti. Nella conclusione si sostiene che la ragione della scomparsa della *nomothesia* vanno cercate tanto nell'evoluzione intrinseca delle procedure di *nomothesia* lungo il quarto secolo quanto all'abuso di questa terminologia da parte di vari regimi filomacedoni negli ultimi anni del quarto secolo.

## Introduction

The legislative procedures implemented by the Athenians after democracy was restored at the end of the fifth century BCE have been the subject of several studies. There has been much debate both about the procedures used to revise and reform the Athenian constitution in the last decade of the fifth century<sup>2</sup> and about how the Athenian legislated in the fourth.<sup>3</sup> In a recent article Edward Harris and I have shown that at the end of the fifth century a board of *anagrapheis* was given the task of finding the laws of Draco and Solon, submitting them to the Assembly for ratification and then reinscribing them on *stelai* placed in front of the *Stoa Baileios* (a process started in 409). The Assembly also elected a board of *nomothetai* to propose new laws to the Athenians, restoring and, in the process, reforming the constitution.<sup>4</sup> Among the measures proposed by the *nomothetai* and ratified by the Assembly were rules creating a clear distinction between *psephismata* (decrees), measures passed by the Assembly and enacted either for a short period or for individuals, and *nomoi* (laws), permanent rules applying to all Athenians alike, which were instead passed through a new procedure called *nomothesia*. The new procedure involved a mandatory vote by the Assembly before any proposal for a new law could be proposed, publicity of the proposals, both in front of the monument of the Eponymous Heroes and through repeated reading in the Assembly, and the appointment of *nomothetai* who would then decide whether the new proposals would become law or not. A *psephisma* could be indicted through a *graphe paranomon* and repealed by a popular court, while a law could be repealed through a very similar procedure, the *graphe nomon me epitedeion theinai* (public action against an inexpedient law). This new system on the one hand was designed to maintain the stability of the laws and the constitution, which could not be overthrown by a simple vote in the Assembly as happened in 411 ([Arist.] *Ath Pol.* 29.2-3; Thuc. 8.67.1). At the same time, the new procedure provided a clear and consistent hierarchy of rules, as well as a definite procedure for revising and altering the laws of the city and for proposing new laws. This procedure was democratic because it was open to every Athenian citizen and promoted the rule of law by assuring consistency through the removal

2. Cf. e.g. Harrison (1955), Robertson (1990), Rhodes (1991), Carawan (2002).

3. Cf. in the last fifty years in particular MacDowell (1975), Hansen (1979-80; 1985), Rhodes (1984), Piérart (2000) and Canevaro (2013).

4. Canevaro-Harris (2012).

of contradictory laws.<sup>5</sup>

Some scholars have argued that whatever the *nomothetai* intended at the end of the fifth century when they devised this system, it had broken down by the middle of the fourth century when the Assembly was once again the unchecked legislative body of the Athenian state.<sup>6</sup> This assumption is not supported by the evidence: there are nine epigraphical texts of laws,<sup>7</sup> and whenever it is possible to check, the enacting body are the *nomothetai*. Moreover the rules enacted in these laws are usually permanent norms valid for all Athenians, and the only temporary rules approved by the *nomothetai* appear to be financial arrangements. This is due to the fact that the allocation of the funds of the Athenian state was fixed by a law determining the *merismos*, and therefore any change in the allocations of the *merismos* had to be passed as a law, since no decree could have higher validity than a law. There is moreover no clear example in the epigraphical record of general permanent rules passed as *psephismata* in the fourth century. Hansen has surveyed also the literary evidence for laws and *nomothetai* in the fourth century down to the Lamian war, and shown that the Athenian adhered very strictly to their new rules about legislation.<sup>8</sup>

Whatever the disagreement about the details and even the nature of the fourth century legislative procedure, one can still agree that in the fourth century down to Lamian war there was a strict distinction between laws and decrees, a more complex procedure for enacting laws, which were not ratified by the Assembly, but by a body of *nomothetai*, multiple checks to guarantee the consistency of the 'legal code', and a judicial review of new enactments, both laws and decrees, which was however activated on a voluntary basis by an individual Athenian. But what happened after Athens lost its independence to Macedon? In the turbulent years following the Lamian war, through the multiple changes of regime, the many oligarchic (or pseudo-oligarchic) constitutions and the following (alleged) democratic restorations, did the Athenians preserve this complex and delicate legislative system? Was it ever repealed, and restored? Whatever happened in these years, scholars have sometimes simply assumed that the legislative procedures of the late fifth century were revived in 307 together with most democratic constitutional features when Demetrius Poliorcetes freed Athens from the regime of Demetrius of Phalerum, and survived through the third century. For instance, Hansen relies on a partially published inscription (SEG 37.89) and argues that they continued into the third century, and O'Sullivan assumes their existence in the years immediately following the democratic restoration of 307.<sup>9</sup> Most other scholars simply do not discuss the problem.

5. Cf. Canevaro (2013).

6. E.g. Busolt (1920: 458), Kahrstedt (1938: 12-8), Harrison (1955: 27), Quass (1971: 71).

7. In chronological order SEG 26.72; R. S. Stroud, *The Athenian grain-tax law of 374/3 B.C.* (*Hesperia Supplement* 29) (Princeton 1998); Agora Excavations, inv. no. I 7495 (unpublished); IG II<sup>2</sup> 140; IG II<sup>2</sup> 244; SEG 12.87; IG II<sup>2</sup> 334 + SEG 18.13; IG II<sup>2</sup> 333; SEG 35.83. Cf. also the regulations for the Mysteries at Eleusis in a fourth-century inscription (K. Clinton, *Eleusis: The Inscriptions on Stone. Documents of the Sanctuary of the Two Goddesses and Public Documents of the Deme*. Vol. 1A: Text [Athens 2005] no. 138 and Vol. II: Commentary [Athens 2008] at 116).

8. Hansen (1978; 1979).

9. Hansen (1983: 206), O'Sullivan (2009: 214 n. 57). Cf. also Lambert (2004: 109 n. 84).

This article will examine and discuss the (scanty) relevant epigraphical and literary evidence for the years 322-301. It will attempt to interpret the changes in legislative practices in these years both within the framework of the wider constitutional changes occurred due to external shocks and Macedonian power, and in the light of previous developments and arrangements in *nomothesia* from the end of the fifth century. The Athenians (and their Macedonian overlords), when reforming legislative institutions after the Lamian war, responded to problems and needs dictated by their current political and constitutional circumstances, yet always acted within a tradition and consistently with assumptions about what is appropriate when it comes to legislation which had their roots in previous institutional arrangements. These, in the context of the various changes in legislative procedures in these years, played the role of blueprints, legitimizing and making recognizable to the Athenians solutions which were largely innovative.<sup>10</sup> In detail, I shall argue that *nomothesia* as it was practised in the fourth century did not survive the limitation of the full-right citizens imposed by Antipater in 322, and that later Demetrius of Phalerum assumed himself the role of *nomothetes*, while at the same time using a board of *nomophylakes* (which replaced the *graphe paranomon* and the *graphe nomon me epitedeion theinai*) as a pre-emptive check on the legislative activity of the Assembly. When democracy was 'restored' in 307 by Demetrius Poliorcetes the *nomothetai* found in our sources (their last attestation in the record) were not the same as the pre-322 *nomothetai*, but rather a special board, possibly imposed by Demetrius himself, in charge of proposing laws for the purpose of facilitating the 'democratic transition', and submitting them to the Assembly for approval. The old procedure of *nomothesia*, which provided a separate procedure for passing laws and multiple checks to assure the consistency of the laws of the city, was not revived in 307, and in all likelihood never reappeared in Hellenistic Athens.

### Antipater's regime and the first 'restoration'

After Antipater's victory at the battle of Crannon in 322 the Lamian War was over.<sup>11</sup> Antipater forced each Greek city to negotiate individually, and the Athenians were among the last to enter negotiations. They sent

10. The way I tackle these issues has been heavily influenced by the work of modern historical institutionalism (see the foundational essay, March-Olsen 1984, and 2006 for a synthesis), and in particular by what has been defined as 'ideational historical institutionalism': an approach particularly (and appropriately) popular in the study of public law (see e.g. Smith 2006 and Lieberman 2002). Change in institutions must be explained in terms of gradual development, and described as the result of inherent features of both the relevant institutions and their relevant (embedded) ideas. Critical junctures when exogenous factors accelerated developments and brought about rapid institutional change still saw new legislative solutions being created in accordance with persistent legislative habits and shared ideas (if not ideals) of what is appropriate when creating laws. However, rather than providing an analysis structured around specific theoretical assumptions, I decided in this context to provide a reconstruction which is structured as a detailed analysis of the source material and does not depend on any specific theoretical preconceptions. The complexity of the sources, often rather sparse, and the need to assess thoroughly their reliability and their relationships make in this context such an approach necessary.

11. Cf. Habicht (1997: 36-42)

envoys to Thebes where the Macedonians were standing by ready to launch an invasion of Attica. The most important persons in this embassy were Phocion and Demades (whose citizen rights were reinstated for this very purpose), but Demetrius of Phalerum also makes an early appearance. Antipater required unconditional surrender, and the Athenian envoys, despite having been made plenipotentiary by the Assembly, went back to Athens to have the authorization to negotiate on these terms confirmed. Presumably it was by then quite clear that the final settlement would involve some substantial constitutional reform, and the envoys did not want to run the risk to be indicted for *katalysis* of the *demos*. Plutarch (*Phoc.* 27.3) and Diodorus (18.18.3-4) provide us with the details of the agreement struck by the envoys: the Athenians were to enter *philia* and *symmachia* with Antipater, accept a garrison at Munichia, surrender the orators who had fomented the war, lose Oropus and, following a ruling by Perdiccas, Samos. Even more important, Antipater restricted citizenship to those who owned at least two thousand drachmas, which reduced number of citizens with full rights to 9000. The Athenians who lost rights as a result of this reform are estimated at 12000 by Plutarch, and 22000 by Diodorus.<sup>12</sup> Such an imposition of constitutional reform is in line with what we see in the extant *diagrammata* with which Alexander and Ptolemy imposed constitutional changes to Chios, Tegea and Cyrene.<sup>13</sup> The king would send a *memorandum* to which the city has to adhere in reforming particular institutions. Sometimes the *diagramma* goes into detail about the new constitutional arrangements, sometimes it only provides for the constitution to be made timocratic or democratic and has the citizen appoint suitable magistrates to take care of the transition.

In this case, even if we assume that Antipater imposed only the census of 20 minas, this constitutional change must have involved a general reform of democratic institutions: it is unthinkable that democracy could have continued working as before after its citizen body was reduced by two thirds. 9000 citizens over eighteen were certainly not enough to provide annually 6000 citizens over thirty years old to act as judges in the lawcourts. The evidence for the institutional changes that occurred following these peace arrangements is scanty, but we must assume that they were extensive. *Suda* (s.v. Demades) reports that these changes brought about the destruction of the lawcourts and of the rhetorical contests. This piece of information is often discarded, and there is some possible evidence from this period for

12. On these years see in general Habicht (1997: 42-53) and Tracy (1995: 7-30) and more in detail and with abundant bibliography Poddighe (2002). See also Williams (1983) and Dreyer (1999: 157-9) For recent discussions of the constitutional changes see e.g. Rhodes with Lewis (1997: 39-41) and Oliver (2003: 40-51) On these estimates see recently Van Wees (2011: 107-10): he argues convincingly that both figures are ultimately unreliable, as they are both derived from Demetrius' census compared with the known figure of 9000 with citizenship rights under the regime of Antipater. Following his calculations, it is likely that 9000 conserved their rights out of a total citizen population before the peace agreement of between 28000 and 32000..

13. Chios 32; *IPArk* 5; *SEG* 9.1. Cf. recently Bencivenni (2003: 11-2, 15-38, 79-104), *RO* 84 on the *diagramma* for Chios, and Martini (2011) on that for Cyrene. Two decrees from Mytilene (*SEG* 36.750; *SEG* 40.673), as well as a dossier of documents from Eresus (*IG* XII.2 526), also refer to *diagrammata* from Alexander (cf. Bencivenni 2003: 39-78). This seems to be the standard mode by which Macedonian kings at this date imposed constitutional changes in the Greek *poleis*.



lawcourt *dokimasia* in a grant of naturalization, which would show that the lawcourts did survive in some form.<sup>14</sup> Nevertheless, it should be recognized that nothing like the judicial system in force through the fourth century could have survived such a reduction in the numbers of full-right citizens.<sup>15</sup> Once again, the constitutional changes here must have been extensive. This already suggests that some changes must have occurred in the legislative procedures: the judicial review on a voluntary basis of laws and decrees through the *graphe paranomon* and the *graphe nomon me epitedeion theinai*, if it survived, must have lost much of its effectiveness, and must have been performed by a judicial board whose composition and selection methods were much different from the earlier fourth century. On the other hand, as we shall see, it is more likely that the profound institutional changes occurred in the three years of this regime were not hampered by the cumbersome procedure of *nomothesia*, and the *graphe paranomon* and the *graphe nomon me epitedeion theinai* most likely had been repealed straightaway together with the first reforms, to guarantee smooth constitutional restructuring, or else they simply stopped being used.

Changes must also have been implemented to deal with the significantly lower number of men who had a right to attend the Assembly. To give just a couple of examples, through the fourth century a law ordered that grants of citizenship to foreigners had to be ratified with a *quorum* of no less than 6000 voting by secret ballot ([Dem.] 59.89-90). The same *quorum* was a requirement to grant an *atimos* or state-debtor (or anybody else on his behalf) the right to address the Assembly (Dem. 24.45). Hansen has shown that out of a citizen body of around 30000 citizens the average number of citizens who attended most Assembly meetings must have been comfortably over such a *quorum*.<sup>16</sup> With a severely reduced citizen body of around 9000 such a *quorum* would have prevented any grant of citizenship or *adeia* to speak, and it is safe to assume that the validity of this rule was discontinued in these years, and the second vote on naturalization (attested e.g. by *Agora* 16.101) was performed without a *quorum*. We have six extant naturalization decrees from these years.<sup>17</sup> A further grant (*IG* II<sup>2</sup> 398), presumably from the year 319/8, shows that the ratification of the grants became at some point the task of a panel of judges. Osborne considers this an indication of a democratic constitution and attributes the decree to the period after the restoration of democracy. The prescript of the decree is not preserved, but this change in the practice of naturalization could as well be a late result of the reduction in the numbers of citizens: a procedure that could work only imperfectly with the reduced number of citizens was discontinued and eventually, perhaps after the restoration of democracy, replaced by a different one. In such matters, as well as in the composition and working of the lawcourts, even when we cannot conclusively find in the sources any clear evidence of changes and constitutional rearrangements, we should definitely postulate that such changes happened and were extensive,

14. *IG* II<sup>2</sup> 387 (Osborne D36). This decree however is dated by Osborne to 319/8 after democracy had been restored. See also Rhodes with Lewis (1997: 40).

15. Cf. Banfi (2010: 14 n. 22); O'Sullivan (2009: 28).

16. Hansen (1983: 1-20).

17. Osborne D29-34.

otherwise we could not make sense of how the Athenian state kept working between 322 and the royal decree of Polyperchon in the autumn of 319. Once again, it is very unlikely that in a context in which so many reforms of this nature were passed in a very short time (three years at the most), Athenians with full rights still retained the right to indict every new law for review in a law court. It is also improbable that every reform had to go through the complex *nomothesia* procedure followed earlier in the fourth century.

The selection of magistrates, their functions and their numbers, must also have been reformed following the introduction of the 20 minas requirement. In the fourth century the Athenians selected around 1200 magistrates every year (including the members of the *Boule*), of whom 1100 were selected by lot. All magistrates had to be more than 30 years old, and no Athenian could hold more than one office in a given year.<sup>18</sup> Given that the selection of magistrates in Athens was held only among those who decided to run for office, and not among the whole citizen body, it must have been very difficult to find enough candidates to fill 1200 positions in a citizen body of 9,000. It must have been even more difficult to find in the poorest demes enough suitable candidates who owned more than 2000 drachmas for the Council, as the candidates for the Council were nominated in the individual demes. In fact, we have some evidence that reforms in this area were performed: for example the office of the *apodektai*, widely attested until 323, disappears from our records afterwards.<sup>19</sup> Diodorus (18.18.4) even seems to imply that selection by lot was abolished and magistrates were selected only through election, but the interpretation of this passage is controversial.<sup>20</sup> The most famous of the reforms of these years is certainly the institution of the *anagrapheus*, who was probably elected and replaced the *grammateus kata prytaneian* selected by lot. This official must have been so important that in inscriptions of this period he even precedes the eponymous archon.<sup>21</sup> Once again, these many reforms, enacted in a very short period of time, are unlikely to have been subjected to the cumbersome fourth-century procedure of *nomothesia*. One further reform in this area, preserved in an inscription (IG II<sup>2</sup> 380), makes it virtually certain that *nomothesia* did not survive Athens' defeat in the Lamian war. This inscription contains a statute proposed by Demades: because the duties of the *astynomoi*, in the Peireus at least, are transferred to the *agoranomoi*, the statute lists the new duties of these officials in policing the Peireus. This statute is clearly a general norm intended to be valid forever, and involves the ordinary (not special) duties of an ordinary office.<sup>22</sup> Before 322 it would have surely been enacted by the *nomothetai* as a law, and yet this inscription reports a decree of the *demos*,

18. Cf. Hansen (1991: 225-45).

19. Rhodes (1993: 591) suggests that also the *diaitetai* were abolished.

20. Oliver (2003: 50-1 n. 41) doubts that the evidence can be conclusive on this respect, and believes sortition was retained.

21. See Dow (1963) for the classic discussion on this topic, Henry (1977: 50-66) for a survey of the *anagrapheus* in inscriptions, and Rhodes with Lewis (1997: 37-40) for some useful considerations.

22. Oliver (2003: 50-1 n. 41) has some doubts that this transfer of duties could have been as general as is usually assumed. It may indeed refer only to some of the old duties of the *astynomoi*, but the transfer is not temporary and the measure is a general one, as the language of the inscription makes very clear.



and the motion and enactment formulas are *edoxen toi demoi* and *dedochthai toi demoi*. That this statute was enacted as a decree of the Assembly is clear evidence that in 320 laws were no longer the province of a specific board of *nomothetai*, and were instead enacted in the Assembly as decrees.

To sum up, not only the reduction in the number of citizens in the years 322-318 and the massive number of institutional and constitutional reforms that this made necessary make it very unlikely that the individual reforms had to go through the cumbersome procedure of *nomothesia*; a measure passed in these years, which would have been a *nomos* ratified by the *nomothetai* earlier in the fourth century, is enacted by the Assembly as a simple decree, which makes it virtually certain that the previous *nomothesia* procedures were discontinued following the defeat in the Lamian war.

Our sources for the short period of the restoration of democracy following the edict of Polyperchon are too scanty to allow us to follow the fate of the legislative procedures in Athens. Polyperchon issued his edict in autumn 319 and the Athenians returned to democracy in spring 318, around the last day of Xandicus (in the Macedonian calendar).<sup>23</sup> Diodorus (18.55.2, 4, 56.3, 65.6) claims that the Athenians immediately overthrew the existing officials and restored the most democratic offices, yet a decree from the end of the year 319/8 that still mentions the *anagrapheus* rather than the *grammateus* shows that the Athenians did not immediately proceed to restore all the offices of the democracy, but rather let the year finish before fully restoring them.<sup>24</sup> With the year 318/7 we find once again the *grammateus* instead of the *anagrapheus*, which indicates that the offices of democracy had been fully restored.<sup>25</sup> We can assume that the census requirement for enjoying full citizen rights must also have been lifted. The grant of citizenship to Euphron of Sicyon, destroyed by the oligarchy and reinscribed by the democracy (IG II<sup>2</sup> 448), states that 'now the *demos* has returned and has recovered the laws and the democracy'. To what extent this actually happened, and whether 'the laws and the democracy' were recovered to such an extent to include also the fourth-century legislative procedures, is difficult to say. Yet this restored democracy did not last long and by the summer of 317 a peace treaty with Cassander had appointed Demetrius of Phalerum in charge of the Athenian state and brought about other constitutional changes. *Argumenta ex silentio* are dangerous, but it must be noted that we have no evidence whatsoever for any systematic procedure of democratic restoration (similar to that of 403 or, as we shall see, of 307), with the actual enactment of laws restoring and reforming the constitution. In fact, such a systematic procedure is very unlikely, given the very short time this democratic regime survived. It could be the case that such a process was interrupted by the peace treaty with Cassander, and yet during the year and a few months of the regime something like that was actually in the process of being performed (despite the lack of evidence in our sources). Alternatively, since the oligarchic regime inaugurated by Antipater had lasted only under three years, it is possible

23. See in general Habicht (1997: 47-53) and Rhodes with Lewis (1997: 40-1) for a discussion of the constitutional changes after the restoration of democracy.

24. IG II<sup>2</sup> 387 = Osborne D35.

25. Cf. IG II<sup>2</sup> 448 = Osborne D38.

that the restoration of democracy was effected as a blanket restoration, a return to the *status quo* before the peace treaty with Antipater. If this was the case, it is not impossible that the old legislative procedures made a brief reappearance at this point, although there is no guarantee that they were actually used.

### Demetrius' regime

Whatever happened in this year and few months, the peace treaty with Cassander in summer 317 put an end to it. This peace agreement was negotiated by Demetrius of Phalerum, and although the text of the treaty is not preserved Diodorus (18.74.3-11) provides us with reliable information about its contents. This settlement made the Athenians allies of Cassander, with full control of their city, of Attica, of their revenues, of their fleet and of everything else. On the other hand the fort of Munichia would remain in Macedonian hands until the end of the current war, and the constitution would be reformed and made timocratic, with significant number of citizens losing their franchises, and only 21000 conserving their citizen status.<sup>26</sup> Again a Macedonian king imposed constitutional changes on the city, in line with the provision of the extant *diagrammata* of the same years. This limitation of the full-right Athenian citizens must have again involved considerable changes in the working of the Athenian constitution, and yet we have only two inscriptions safely dated to the ten years before Demetrius Poliorcetes freed the city once again, not enough to discover much about such reforms, except that we find that the usual *grammateus* once again seems to disappear. In fact, the few inscriptions from this period do not mention any secretary, so it is hard to know what official performed the role.<sup>27</sup> On the other hand, we have plenty of literary evidence for the new legislation enacted during this decade, which is attributed to Demetrius of Phalerum.<sup>28</sup> The nature of Demetrius' powers and the extent of his legislation as well as one particular office which seems to have been introduced by him, the *nomophylakes* strongly suggest that the legislative procedures typical of fourth-century democracy were either repealed or not restored by Demetrius.

I shall briefly discuss the powers Demetrius held during these ten years

26. See in general Habicht (1997: 53-66) and the two recent monographs on Demetrius Banfi (2010) and O'Sullivan (2009). On Demetrius' role in negotiating the peace, and on its conditions see for a survey of the sources and different accounts Banfi (2010: 53-7) and O'Sullivan (2009: 40-7). The information on Demetrius census comes from Athen. 272c. Diod. 18.74.3 adds that the property-qualification was 1000 drachmas, but see recently Van Wees (2011) who has argued that this was the threshold only for the highest offices, and that the minimum property-qualification for the 21000 citizens was between 300 and 500 drachmas.

27. IG II<sup>2</sup> 450 = D42; 451; 453 (cf. Rhodes with Lewis 1997: 42 nn. 41 and 42). See Tracy (1995: 36 ss.), who argues however that the lack of inscribed decrees from these years is due to the attempt from Demetrius to reduce expenses and luxury (see also O'Sullivan 2009: 116-7 for a similar explanation). Banfi (2010: 89-95) convincingly refutes this theory and argues that the reason is simply reduced activity of the Assembly.

28. See Banfi (2010: *passim*) and O'Sullivan (2009: *passim*) for Demetrius' legislation.

of government and how this affects our discussion, and then move to the significance of the office of the *nomophylakes*. In addition to imposing a change of the constitution in fact Cassander appointed an *epimeletes*, an overseer of the city of Athens. Cassander chose for this task the negotiator himself, Demetrius. Such offices are typical of Macedonian bureaucracy, and we find in early Hellenistic times overseers at Sardis, Ilium, Megalopolis, nominated by Alexander, Cassander and Antigonus.<sup>29</sup> If this was the case with Demetrius, one wonders how this office was integrated into the Athenian constitution. Some scholars (in particular O'Sullivan) have argued that this office marked only the relationship between Demetrius and Cassander, yet had no particular validity in Athens. Demetrius, much like Pericles in the fifth century, governed and legislated through his personal influence, supported perhaps by pressure applied by the presence of a Macedonian garrison in Munichia.<sup>30</sup> The problem with this interpretation is that a deme decree from Aixone (IG II<sup>2</sup> 1201), which honours Demetrius for his achievements from 317, in particular for securing the peace agreement with Cassander, reports, although in fragmentary fashion, that Demetrius was indeed elected by the Athenians to some kind of office. The passage in question states that Demetrius [--9-- αἰρεθεὶς ὑπὸ τοῦ δήμο[u τοῦ Ἀθηναίων νόμους] ἔθ[η]κεν καλ[οὺς καὶ συμφέροντας τεῖ πόλ[ε]ι. Most of the restorations are uncontroversial: [--]ρεθεὶς must be restored into αἰρεθεὶς, and the *demos* must be that of the Athenians (surely he was not elected by the deme of Aixone). Likewise, it is clear that he νόμους] ἔθ[η]κεν καλ[οὺς καὶ συμφέροντας τεῖ πόλ[ε]ι, an expression which is found elsewhere in similar fashion (cf. e.g. [Plut.] Vit. X Or. 852b; Agora 16.257.1 l. 9; Agora 16.261.1 = IG II<sup>3</sup> 1292 l. 15). This means that Demetrius, once he was elected to some office (notice the participle), in that quality proceeded to legislate. There has been much speculation about what this office must have been. Some proposals (*anagrapheus* and *thesmothetes*) are too long to fit the 9-spaces lacuna, and anyway unlikely.<sup>31</sup> Ferguson and Gehrke proposed *strategos* on the basis of a statue basis, IG II<sup>2</sup> 2971 which gives this title to a Demetrius son of Phanostratus from Phalerum, yet Tracy has recently shown that this inscription must be dated to the late third century, and refers to Demetrius' grandson, and not to Demetrius himself.<sup>32</sup>

The two most likely restorations are *epimeletes*, following Diodorus' account of the treaty with Cassander, and *nomothetes*. One problem with *epimeletes* is that it is ten letters long and would violate the *stoichedon* arrangement of the inscription. Another problem is that this is not an Athenian office, but rather a Macedonian one. A third problem is that

29. Hammond (1985: 160 and *passim*).

30. O'Sullivan (2009: 40-6, 90-103 and *passim*). See also Tracy (1999) for a similar view. Against such interpretations see in particular Bayliss (2011: 61-93).

31. Cf. Dow-Travis (1943: 150) and Banfi (2010: 58-9) against these restorations. *Thesmothetes* is a normal office which does not carry any legislative power, while *anagrapheus* as the office of the early 310s was an elective office and changed every year, while as an office concerned with legislation, as the inscription wants it, is the office held by Nicomachus in the late fifth century, but it involved only finding Solonian laws and submitting them to the Assembly for approval. Both offices are unlikely to have been those to which Demetrius was elected.

32. Ferguson (1911: 47 ff.) and Gehrke (1978: 137 ff.), but see Tracy (1995: 172-4), Banfi (2010: 60-2) and O'Sullivan (2009: 97).

Diodorus explicitly says that Cassander nominated Demetrius *epimeletes*, whereas the inscription from Aixone states that he was elected by the Athenians to this office.<sup>33</sup> The restoration *nomothetes* on the other hand is suggested by the inscription itself: after and because he was elected to the office (participle aorist) Demetrius proceeded to pass laws (νόμους] ἔθ[η] κεν). This proposal is confirmed by plenty of external evidence: Syncellus (Dem. Phal. fr. 20 B Fortenbaugh), who calls Demetrius the third *nomothetes* of Athens after Solon and Draco, might be too late a source to be given too much credit, but the *Marmor Parium* (B 15-16, Ep. 13) records specifically that Demetrius νόμους ἔθηκεν. Moreover Plutarch (Arist. 27.3-5) reports that Demetrius himself in his work *Socrates* states that he granted the descendants of Aristides a small revenue νομοθετῶν, that is in quality of *nomothetes*. Duris (Demetrius 43a Fortenbaugh) must have alluded to this title when he claims that Demetrius lived a life *anomothesos*.

The case for Demetrius being elected to the office of *nomothetes* has been forcefully made by Dow and Travis, and although it is likely that no truly conclusive argument can be brought for or against this restoration, this remains the strongest proposal.<sup>34</sup> It is not impossible, and in my opinion quite likely, that the peace treaty briefly summarized by Diodorus may have contained (or implied) that the Athenians should elect the *epimeletes* of Cassander to a suitable office to facilitate the transition to a timocratic constitution. At any rate, Plutarch's citation of Demetrius' words in the *Socrates* is at least clear evidence that Demetrius liked to characterize himself as a *nomothetes*, and as such he was later remembered. Strabo (9.1.20) formed the impression, apparently from reading Demetrius' 'memoirs' (*hypomnemata*), that he not only did not dissolve the democracy, but rather corrected it (ἐπενώρθωσε). This once again shows that Demetrius characterized his political action as that of a constitutional reformer, one who acted within the framework of the *patrios politeia*. He portrayed himself as a *nomothetes* like Draco and Solon while at the same time exploiting the long standing debate on the *patrios politeia*, which had been invoked since the late fifth century by reformers and aspirant reformers alike, whether of democratic or oligarchic belief. To confirm this, one should also point out that his most apologetic works deal with his constitutional reforms and with his legislation, and among his best attested scholarly interests we find laws and legislation. Banfi has also convincingly argued that in his work in five books περὶ τῆς Ἀθήνησι νομοθεσίας Demetrius not only dealt with various Athenian laws and institutions (e.g. the Assembly, the *eisangelia*, the demarchs, the duties of the resident aliens) but often, as with arbitration and *parastasis*, proceeded to criticize them and discuss the changes and reforms that he had introduced himself.<sup>35</sup> Once again, the use of the word *nomothesia* in the title is circumstantial evidence that this was the office to

33. *Epimeletes* is the restoration of Wilhelm in *IG II<sup>2</sup>* 1201 and has been more recently endorsed by Tracy (1995: 43-46), Dreyer (1999: 161 n. 205), Gagarin (2000: 348), Banfi (2010: 53-63), Paschidis (2008: 60-1). Haake (2008: 90, 98) also seems to accept that this was Demetrius' title in Athens. Against this restoration see recently O'Sullivan (2009: 96-7).

34. This restoration, after Dow-Travis (1943: 148-59), has been recently endorsed by Rhodes with Lewis (1997: 41) and O'Sullivan (2009: 95-7).

35. Banfi (2010: 45-51).

which Demetrius was elected.

In fact, there is evidence (Chios 32 = RO 84) that in 334 Alexander sent a *diagramma* instructing the Chians to elect *nomographoi* who would write and correct (*grapsousi kai diorthosousi*) the laws to effect a change in regime. In this case the regime was to be made into a democracy. His choice was apparently that of having local magistrates, bearing a recognizable office name, elected to reform the constitution, rather than impose specific changes and rules as we find in other *diagrammata*.<sup>36</sup> A similar arrangement, with *nomographoi* in charge of creating new laws, seems to have been imposed by Antigonos to the Teans and the Lebedians at some date between 306 and 302 (*Teos* 59): they also had to elect *nomographoi* to propose new laws.<sup>37</sup> It is not inconceivable that Cassander not only appointed Demetrius of Phalerum the Macedonian *epimeletes* in Athens, but also ordered or recommended that he be elected *nomothetes* in order to write and correct the laws to facilitate the transition to a timocratic constitution. But even if we do not accept this, it is at least clear that Demetrius characterized his action as that of a *nomothetes*, and brought substantial changes to the laws of Athens over the whole period of his regency. In such a context it is very difficult to believe that he may have allowed a board of *nomothetai* to have the final word about his legislation, and every reform of his to go through such a cumbersome procedure for approval as laws did at least until 322. It is also hard to believe that he would characterize himself through a term that would technically mark him as a member of the board in charge of accepting or rejecting his legislation.

We have no way of knowing in what precise form Demetrius passed his legislation. There are only three extant public inscriptions from the decade of his power, and none of these can be described as a law. On the other hand, one particular board of officials that he created or whose powers he expanded, the *nomophylakes*, also suggests very clearly that no procedure of review of new laws such as fourth-century *nomothesia* was in place during the period of his power. As Banfi has convincingly shown, all fourth century sources, from Plato to Xenophon and Aristotle, agree that the *nomophylakes* were a typically aristocratic magistracy.<sup>38</sup>

The main source for their existence and their functions in Athens is the entry about these magistrates in the *Lexicon Rhetoricum Cantabrigense* (s.v. νομοφύλακες), which draws extensively on Philochorus. The entry first of all specifies that these officials were not the same as the *thesmothetai*, then provides the source of this piece of information: the seventh book of Philochorus. This has been conclusively identified by scholars as the book dealing with Demetrius' decade of power, which strongly suggests that Philochorus named these officials while describing one of Demetrius' reforms.<sup>39</sup> The entry then proceeds, following Philochorus, to show how the

36. Cf. Magnetto (1997: n. 10) and Bencivenni (2003: 33-4). Laronde (1987: 85-128, 249-56) argues that the *nomothetai* mentioned at the end of SEG 9.1 had the same role: they had to propose new legislation along the lines indicated in his *diagramma*.

37. Cf. Bencivenni (2003: 193, 196, 199).

38. Banfi (2010: 142-5). It should be noticed that in the *diagramma* for Cyrene (SEG 9.1) Ptolemy also mentioned *nomophylakes*.

39. Cf. Jacoby (1949: 115); Pearson (1942: 11); Bearzot (2007: 51); O'Sullivan (2001: 51).



*nomophylakes* are different from the *thesmothetai*: while the archons went up to the Areopagus wearing crowns, the *nomophylakes* wore headbands at the dramatic representations, sat before the archons and led the procession for Pallas. In addition to this, and more interestingly for our purposes, they controlled that the magistrates acted in accordance with the laws, and sat in the Council and in the Assembly together with the *proedroi*, preventing things inexpedient for the *demos* from being performed. The Greek here is revealing: the *nomophylakes* sat κωλύοντες τὰ ἀσύμφορα τῇ πόλει πράττειν. The word ἀσύμφορα brings to mind the procedure against inexpedient laws (*nomon me epitedeion*) which was indicted by *ho boulomenos* in the pre-322 democracy, and their role seems here to be exactly that of performing a control on whether something *paranomon* or *me epitedeion* is passed in the Assembly. The difference of course is that rather than a democratic control performed on a voluntary basis in the popular lawcourts, they seem to perform a pre-emptive control on whether something can be discussed or not in the Assembly, as their seat alongside the *proedroi* suggests. They seem to have replaced the democratic procedures of judicial review with a discretionary power acting directly in the Council and the Assembly. Other sources, all drawing from the same passage of Philochorus, seem to confirm that they replaced, or at least were perceived as replacing, the *graphe paranomon* and the *graphe nomon me epitedeion theinai*. Harpocration (s.v. νομοφύλακες), like the *Lexicon Rhetoricum Cantabrigense*, notes that the *nomophylakes* are different from the *thesmothetai*, and that Philochorus in book 7 states they were in charge of making sure that the magistrates acted in accordance with the laws. Pollux (8.94) reports that they were crowned with a white headband (which identifies Philochorus as the source of the information) and confirms that they sat in the Assembly with the *proedroi* and prevented the voting of ἀσύμφορα. Suda (s.v. οἱ νομοφύλακες τίνες) reports the same pieces of information (including the differences between them and the *thesmothetai*, and their ritual roles), but its wording is even more significant: they κωλύοντες ψηφίζειν, εἴ τι παράνομον αὐτοῖς εἶναι δόξειεν, ἀσύμφορον τῇ πόλει. They prevented the Assembly from voting anything either *paranomon* or ἀσύμφορον, that is *me epitedeion*.<sup>40</sup>

The sources therefore all agree that the *nomophylakes* assumed the role that was once performed by the *graphe paranomon* and the *graphe nomon me epitedeion theinai*, and replaced a democratic procedure based on voluntary action by the citizens and decision by the popular lawcourts with the discretionary power to block debate and legislation in the Council and the Assembly by a board of (probably elected) officials.<sup>41</sup> If this is the case, then there can be no question that the existence of the *nomophylakes* not only excludes that *graphe paranomon* and *graphe nomon me epitedeion theinai* could have existed during this period but virtually guarantees that no legislative procedures like those of the pre-322 democracy could have survived Demetrius' reforms. *Nomothesia* was performed individually by Demetrius, who acted much like the lawgivers of old, and the *demos*, far from having available any procedure for independent initiative in legislation, saw its

40. Cf. Gehrke (1978: 154-5).

41. Cf. Gehrke (1978: 151-5). Cf. also Hansen (1974: 55).



powers in this area severely curtailed by magistrates who could stop legislation in the Council and the Assembly before it could be debated and submitted to a vote.

Of course, there have been attempts to argue that the *nomophylakes* were not created by Demetrius, and some scholars hold that the Demetrian *nomophylakes* had no constitutional powers, but were rather a magistracy exercising moral control over the Athenians. If this was the case, then we should be cautious to argue that their existence is evidence that the old legislative procedures had been eliminated. The first problem originates from a passage of Harpocration (s.v. νομοφύλακες), where we read that the *nomophylakes* were mentioned in two speeches of Deinarchus, *Against Himereus* and *Against Pitheas*. The problem with this information is that these speeches of Deinarchus are usually dated to the 320s, and some scholars want therefore to predate the introduction of the *nomophylakes* accordingly to the regime of Antipater, or even to the Lycourgan age.<sup>42</sup> It must be noted however that there is no extant information about the actual date of these speeches, and they could as easily be dated to the 310s (there is no guarantee that this Himereus must be Demetrius' brother, and not another relative still alive in the 310s). Moreover we have no context for the mention of the *nomophylakes* by Deinarchus: he could even refer to a magistracy outside Athens, (proposing its introduction etc.). Deinarchus' mention cannot overweight the fact that these magistrates, their powers and their functions, were discussed by Philochorus in book 7, most likely in the context of Demetrius' constitution.<sup>43</sup> Finally, even if we were to accept that the *nomophylakes* were introduced before Demetrius' regime, the fact that Philochorus discusses them extensively in his book 7 makes it virtually certain that Demetrius had a special interest for them, and reformed their role and their powers.<sup>44</sup>

The second issue is the interpretation advanced by O'Sullivan of the role of the *nomophylakes*: she uses a passage of Pollux (8.102) as evidence that the *nomophylakes* had no function in safeguarding the laws and the constitution.<sup>45</sup> This passage states that the Eleven were called at the time of Demetrius *nomophylakes*. Their job was that of taking care of those in prison, of thieves, slave-dealers and robbers, of putting them to death (when they admitted to their crime) or bringing them before a law court. The door of their office (*nomophylakiou*), through which those convicted passed before being killed, was called the door of Charon. She links this passage with the statement at the end of the entry in the *Lexicon Rhetoricum Cantabrigense*, ascribed to Philochorus, that the *nomophylakes* were introduced by Ephialtes after he stripped the Areopagus of all his previous powers, to argue that the powers of constitutional control must be ascribed to the *nomophylakes* of the time of Ephialtes,<sup>46</sup> while Pollux reports the real powers of the Demetrian

42. Cf. e.g. De Sanctis (1913), Wallace (1989: 202 ff.), Humphreys (2004: 123-5). Jacoby (FGH 328 fr. 64) dates their introduction to the Lycourgan period.

43. Cf. Banfi (2010: 150-3).

44. Cf. Gehrke (1978: 151-2).

45. O'Sullivan (2001 and 2009: 72-86).

46. Gagarin (2000: 352) also believes that it is more likely that the institution of the *nomophylakes* was reintroduced, rather than created, by Demetrius.

*nomophylakes*. Cinzia Bearzot has recently brought several cogent objections against this interpretation.<sup>47</sup> Here it will suffice to summarize her main points. First of all, there is no evidence whatsoever for *nomophylakes* in the fifth century, and it is unbelievable that such a powerful magistracy could simply disappear from our sources.<sup>48</sup> Second, the reforms of Ephialtes are in general a topic for which fourth-century reconstructions have been shown to be dubious and often unreliable, and betray political aims relevant to the fourth century, rather than the fifth.<sup>49</sup> In this specific case, it is easy to see, with Bearzot, how the invention of fifth-century *nomophylakes* may have helped to legitimize Demetrius' reform and their introduction in the 310s. Finally, the passage of Pollux might well be corrupt and contain the term *nomophylakes* where the expected and correct term would be *desmophylakes*. Gehrke has already pointed out how in ancient lexicographical sources there was much confusion between *nomophylakes* and *thesmophylakes*, and between *thesmophylakes* and *desmophylakes*.<sup>50</sup> Cinzia Bearzot has shown that at least the second mention of the *nomophylakes* (*nomophylakiou*) is not unequivocal in the tradition, and must be a corruption: a *Scholion* of Aretas of Caesarea on Plato's *Phaedrus* (59c) quotes Pollux and has *desmophylakiou* and not *nomophylakiou*. Since Aretas had access to the archetype of Pollux, this passage is the oldest witness of the text of Pollux, and confirms that the passage dealt with *desmophylakes*. If this is the case, then also the mention of the *nomophylakes* at the beginning of the passage must be likewise corrupt.<sup>51</sup>

To sum up, there is no reason to believe that the *nomophylakes* were not created (or at least their role reformed) by Demetrius of Phalerus, nor to think that their functions were different from those described by the *Lexicon Rhetoricum Cantabrigense*, Harpocration and Suda. The *nomophylakes* performed a pre-emptive control of constitutionality on the initiatives of the Council and the Assembly, in fact replacing the *graphe paranomon* and the *graphe nomon me epitedeion theinai*. Their existence and their role are evidence that under Demetrius the pre-322 legislative procedures were no longer in force. Demetrius' office, *nomothetes*, was meant to legitimize and make his legislative action acceptable to the Athenians by implying continuity with previous legislative institutions and traditions of legislation, yet the institutional arrangements of legislation under Demetrius were in fact largely innovative. An institution such as the *nomophylakes* was alien to the Athenian tradition, and produced a model of *nomothesia* alternative to the previous democratic ones.

### Demetrius Poliorcetes and the last *nomothetai*

Demetrius' regime did not survive the end of its first decade, when Demetrius Poliorcetes conquered Munichia and announced the liberation

47. Bearzot (2007). Humphreys (2004: 124 n. 44) and Banfi (2010: 157-61) also reject O'Sullivan's thesis.

48. Cf. Banfi (2010: 147-8). Pace Cawkwell (1988).

49. Cf. Gehrke (1978: 51-2 n. 6), Bearzot (2007: 41 ff.) and Banfi (2010: 146-9).

50. Gehrke (1978: 188). Cf. also Banfi (2010: 159-60).

51. Bearzot (2007: 145 ff.). On Aretas and Demetrius' archetype see Bethe's preface to his edition of Pollux at p. VI.

of Athens in 307.<sup>52</sup> Diodorus (20.45.5, 46.3) states that after fifteen years of Macedonian control, started with Antipater, the Athenian *demos* regained its freedom and got back its *patrios politeia*. Plutarch (*Demetr.* 10.2) confirms that in the fifteenth year they recovered their democracy. In fact, the form of democracy in power before the Lamian War was not restored in its totality, with a blanket measure. In terms of institutional development, and given the working of constitutional change in those years, this would have been impossible: every regime had probably proceeded to destroy the actual texts of some of the laws of the previous regime, and we should not think of these changes as orderly restructuring which left previous arrangement in stand-by, but neatly archived and ready to be recovered and made once again valid. If a blanket restoration is conceivable in 318, only three years after Antipater had overthrown the constitution, it is hard to conceive that after ten years of rule by Demetrius of Phalerum, who brought about enormous changes in the Athenian laws and constitution, and after fifteen years since Athens lost its freedom, the Athenian could simply decide to go back to the *patrios politeia*, whatever they thought this to be. A democratic constitution had to be reconstructed through active legislation, and there is no guarantee that all the offices and institutions of the old democracy were revived.<sup>53</sup> In some areas we know that the new regime proceeded to restore old offices: we find once again the *grammateus kata prytaneian*, and we find the *astynomoi* (IG II<sup>2</sup> 652), an office which had been replaced under Antipater's regime. On the other hand, the office of *agonothetes* was not repealed (cf. e.g. IG II<sup>2</sup> 3073, 3074, 3077, 649),<sup>54</sup> and *choregia* was not revived, and more importantly two tribes were added to the Cleisthenic ten, which must have involved substantial changes in the numbers of Councillors as well as in the boards of magistrates appointed on a tribal base.<sup>55</sup>

The years of the 'restoration of democracy' under Demetrius Poliorcetes are particularly important for our purpose, and will be the last ones to be extensively discussed. First, because they are the last period of Classical and early Hellenistic Athenian history for which abundant if patchy literary sources supplement the information we find in inscriptions. Second, the dating of the inscriptions themselves, at least in many cases, is for these years still safe, and the sequence of archons is still reported by Diodorus. Third, it is in these years that we last find a mention of *nomothetai*, and it depends from our understanding of these *nomothetai* whether we can postulate that the pre-322 legislative procedures were ever revived, and could have been used in the third century. After 301 *nomothetai* are never found again in the record (with only one possible yet very unlikely exception), which would suggest that they never existed again in Hellenistic Athens, in any form. This *argumentum ex silentio* is

52. Cf. in general Habicht (1997: 67-81).

53. Cf. Ferguson (1911: 95-107) and more recently Rhodes with Lewis (1997: 42-5) for a discussion of the constitutional changes after Demetrius of Phalerum's fall.

54. Wilson – Csapo (2012) argue that the office of *agonothetes* was in fact created in 307, which would constitute another example of restoration of democracy through active legislation, one that did not restore old institutions but rather created new ones. On the other hand, this reconstruction is problematic, and it is safer to believe that this innovation was due to Demetrius of Phalerum.

55. For all these changes see Rhodes with Osborne (1997: 42-5).

however weakened by the fact that if one looks through all the extant third century inscriptions he finds not a single unequivocal case of an enactment of general value for all Athenians meant to be valid forever. All the extant measures inscribed in the third century, at least as far I have been able to see, would have been in the fourth passed as decrees. Therefore the fact that all of them were enacted by the Council or the Assembly cannot be used as a conclusive argument against the existence of a separate procedure for passing *nomoi* in the third century. In such an evidentiary context, understanding what the *nomothetai* under Demetrius Poliorcetes were is key for advancing an hypothesis about their survival in the third century: if an ordinary board of *nomothetai*, part of an ordinary procedure for passing *nomoi*, was revived in these years, then it is at least possible that they might have performed some role in the third century, whether they were preserved or were at certain points revived as part of one of the 'democratic restorations'. If on the other hand the *nomothetai* at the end of the fourth century were not an ordinary board like those of the pre-322 democracy, part of a separate procedure for passing *nomoi* which made them more difficult to enact and alter, but rather a special magistracy which dealt with constitutional reform or 'restoration' after the fall of Demetrius of Phalerum, then the picture becomes significantly different. If the passing of *nomoi* remained also in these years the province of the Council and the Assembly, then it becomes very unlikely that the existence of a separate procedure for passing *nomoi* was ever again considered an option in the constitutional debate of the fourth century. The next unequivocally attested restoration of democracy, in 287, for which the information is scanty at best, happened 35 years after the last appearance of a separate procedure for passing *nomoi*, 35 years dense with constitutional changes, rearrangements, modifications of the role and name of magistracies and institutions, in a State that probably did not keep orderly records of all the previous laws and constitutional arrangements that had been repealed, and often actively recurred to *damnatio memoriae* of previous regimes. It is very likely that by then the need for separate procedures for passing laws had all but disappeared from the constitutional debate, replaced by considerations about the role of the popular Assembly which considered any limitations of its powers as undemocratic. Understanding the role of the *nomothetai* of Demetrius Poliorcetes' restoration of 307 is not only key for understanding the nature of this restoration, but is, before new epigraphical evidence is discovered, our best chance to advance a plausible hypothesis about *nomothesia* in the third century.

We have one certain attestation of the *nomothetai* in the epigraphical record: IG II<sup>2</sup> 487 honours Eucharis of Conthyle for his work under the archonship of Pherecles (304-3) in the *anagraphe* of the laws οἱ νενομοθετημένοι.<sup>56</sup> The use of νενομοθετημένοι makes it certain that the laws mentioned here are those that have gone through a procedure of

56. Notice that he is honoured as the *anagrapheus ton nomon*, he is not a *nomothetes*, pace Bayliss (2011: 103 'one of the *nomothetai*'). At p. 104 Bayliss rightly calls Eucharis the 'secretary of the *nomothetai*'. These however are not the same thing.

*nomothesia* involving *nomothetai*.<sup>57</sup> Eucharis took care of their *anagraphe* ὅπως ἂν ἐκτεθῶσι πάντες [...] σκοπεῖν τῷ βουλευμένῳ καὶ μηδὲ εἰς ἀγνοεῖν τοὺς τῆς πόλεως νόμους. Ferguson interpreted the role of these *nomothetai*, according to what was in his day the current explanation of the events of the restoration of democracy at the end of the fifth century, as that of performing a full revision of the ‘code of laws’ of Athens after the decade of Demetrius of Phalerum, going through every single old law and deciding whether it should be confirmed or not.<sup>58</sup> Yet Edward Harris and I have shown that the *anagrapheis* at the end of the fifth century were given the task of going through the laws of Solon and presenting them to the Assembly for approval. The *nomothetai* at the time did not vote on old laws, nor did they ratify law proposals. They were rather concerned with presenting new bills to the Assembly for the purpose of restoring and reforming the constitutional arrangement of the Athenian state.<sup>59</sup> Following their action, and one of their reforms, in the fourth century a board of *nomothetai* was then in charge of voting on new laws and enacting them.<sup>60</sup> It is far from clear, and would be in fact unprecedented, if in the last decade of the fourth century these laws *νενομοθετημένοι* were old laws that were confirmed by the *nomothetai*.

In fact we have positive evidence that these *nomothetai* dealt with new laws: Diog. Laert. 5.38, Athen. 13.610e-f and Poll. 9.42 all refer to a measure proposed by a Sophocles, which must be dated to 307/6, that imposed that all philosophical schools in Athens should be approved by the Athenian Council and Assembly, and otherwise be closed down.<sup>61</sup> Such a measure can safely be described as a law. Following the enactment of this measure Theophrastus had to leave Athens. We will come back to the constitutional aspects of the enactment of this measure, but right now it is important to point out that its approval involved the *nomothetai*. A fragment of Alexis’ *Hippeus* (fr. 99), which was probably spoken by an old man or a *paedagogus*, reads: ‘May the gods grant many blessings to Demetrius / and the *nomothetai*, for they have thrown the men / who transmit to our youth the power of discourse, as they call it, / out of Attica to the crows’ (tr. O’Sullivan). In the previous line the fragment even refers to the Academy. This fragment makes clear that the *nomothetai* were involved with Sophocles’ enactment, and therefore

57. Cf. *I Orop* 297 = *IG II<sup>3</sup>* 347 from 332/1 where Phanodemus is honoured for his legislative activity and the same verb *nomothetein* is used to indicate that the law went through *nomothesia* (in this case pre-322 *nomothesia*). Cf. Lambert (2004: 106 and 109 n. 84).

58. Ferguson (1911: 103-7) brings as further evidence of a full revision of the ‘code’ a passage of Polybius (12.13.9-12) that reports Demochares’ criticism of Demetrius of Phalerum. The passage ends in Ferguson’s translation with the words ‘And a fine set of laws this blondined Solon has drawn up. Let them be revised at once’. This would indeed be evidence of a revision of the ‘code’ of laws, yet these last two sentences are nowhere to be found in Polybius (cf. Gagarin 2000: 351 n. 11). Habicht (1997: 70, 73-4) seems to accept Ferguson’s interpretation and states that ‘the entire code of laws was published’, but does not discuss the matter any further. Marasco (1984: 43-4) and Hedrick (2000a and 2000b) also explicitly endorse this interpretation. Gagarin (2000: 364) rejects instead Ferguson’s theory and considers more likely that these *nomothetai* proposed new laws, but makes this statement only in passing, without arguing the point.

59. Canevaro – Harris (2012: 110-6).

60. Cf. Canevaro (2013).

61. For the date of the measure cf. Arnott (1996: 858-9). Cf. Haake (2007: 16-43 and 2008) for its provisions and rationale.



their task was not that of going through, revising and confirming the old laws; they rather dealt with new bills, whether proposing them or voting on them is still unclear.

Once we have established that in all likelihood the *nomothetai* dealt with new laws, we are left with two alternatives: they could either be a body like the pre-322 board of *nomothetai*, in charge of voting on and ratifying new laws, as many scholars have in recent years assumed,<sup>62</sup> or they could resemble the *nomothetai* of the late fifth century, in charge of proposing new laws and reforming the constitution after a period in which democracy was overthrown. In the first case, they would be an ordinary board, and their reappearance would be evidence that the pre-322 *nomothesia* was revived in 307/6. In the second case however they would be a special magistracy with the task of creating new laws (or even redrafting old ones) with the purpose of restoring the democracy. It is likely that the Assembly, like at the end of the fifth century, would have had the final word on their proposals.

To suggest a tentative answer to this question we need to move back to IG II<sup>2</sup> 487. If we were to assimilate the *nomothesia* there discussed with the procedures pre-322, we would find significant difficulties. The inscription mentions *nomoi* three times in relation to the work of *anagraphe* of Eucharès, which makes it clear that his job was concerned exclusively with laws. He was an *anagrapheus ton nomon*.<sup>63</sup> The expression σκοπεῖν τῷ βουλομένῳ καὶ μὴδὲ εἰς ἀγνοεῖν τοὺς τῆς πόλεως νόμους, if read in the light of pre-322 evidence, should refer to temporary records. Hedrick has shown that the expression σκοπεῖν τῷ βουλομένῳ is found eight times before this date and it always refers to impermanent media, such as wooden tablets. It is used this way by Dem. 24.18 about bills to be presented to the *nomothetai* for approval: these must be set out by the proposer in front of the monument of the Eponymous Heroes ‘for anyone who wishes so to see them’.<sup>64</sup> If this is the case also for the task of Eucharès as *anagrapheus*, we can already find here a significant difference with pre-322 *nomothesia*: in the procedure described in Dem. 20 and 24 it was the task of the proposer of a new law to give it publicity, and there was no official in charge of preparing the temporary record to be set out in front of the monument of the Eponymous Heroes (Dem. 24.25; 20.94). The existence now of such an official would suggest that proposing new laws is the task of state officials, with their own special *anagrapheus*. If on the other hand we interpret the *anagraphe ton nomon* as the task of setting up the inscriptions reporting the new laws, then the difference with pre-322 practice is even more striking: laws were previously inscribed by the *grammateus tes boules* (by the year 363/2 this official was no longer a member of the *boule*, and stood in office for a whole year; the term *grammateus kata prytaneian* from this date is interchangeable

62. See e.g. Ferguson (1911: 104-7) endorsed by Hedrick (2000a); Dow – Travis (1943: Green (1990: 49); Arnott (1996: 263); Millet (2007: 25); Haake (2008: 96).

63. Pace Paschidis (2008: 97), who calls Eucharès ‘*anagrapheus* of the council’. At n. 5 he mentions Rhodes (1972: 138 n. 7) in support of considering Eucharès ‘*anagrapheus* of the council’, yet Rhodes makes the opposite point, that the *anagrapheus ton nomon* at IG II<sup>2</sup> 487 is not to be confused with homonymous secretaries of the Council.

64. Hedrick (2000a and 2000b: 331-3).



with *grammateus tes boules*).<sup>65</sup> He was the same official in charge of inscribing decrees, and there was no special official in charge of inscribing new laws. To give only one example, the law of Eucrates, passed exactly thirty years before our inscription, entrusts the *grammateus tes boules* with setting up two inscriptions, one at the entrance of the Areopagus and one at the entrance of the Bouleuterion (Agora 16.73 ll. 23–6). The reason for which there was no special official in charge of inscribing laws is probably that not enough laws were passed every year to justify his existence: Dem. 24.142, in a passage in which he is clearly exaggerating for the purpose of showing that politicians legislate too often, states that Athenian *rhetoires* legislate ‘almost every month’ (πρῶτον μὲν ὅσοι μῆνες μικροῦ δέουσι νομοθετεῖν). In this speech Demosthenes argues that Timocrates enacted a law to protect his friends, and carries on arguing that politicians are debasing *nomothesia* by using it incorrectly and far too often. In the previous paragraph Demosthenes gives as an example to be followed that of the Locrians, who passed only one law in two hundred years. It is clear that the number of laws per year given by Demosthenes, almost one per month, is inflated, but even if we were to accept Demosthenes’ statement, we would be left with about 10–12 laws a year. Hardly enough to justify an official expressly concerned with inscribing them. This is why with pre-322 *nomothesia* the *grammateus tes boules* (or *kata prytaneian*) was in charge of inscribing both decrees and laws.

After the restoration by Demetrius Poliorcetes the office of *anagrapheus*, in charge of inscribing the decrees, if it existed under Demetrius of Phalerum, ceases to exist, and the *grammateus kata prytaneian* is restored. IG II<sup>2</sup> 487 itself is inscribed by this official. The existence of an additional *anagrapheus ton nomon* (or a board of them), whose task is preparing temporary records of proposals for new laws to be set out in front of the Eponymous Heroes, or that of inscribing the laws once they had been ratified, marks a significant difference with pre-322 *nomothesia*. First of all, it points to a very high volume of legislation at least between 307/6 and 304/3, much higher than with the previous legislative procedures, perhaps comparable with that of the restoration of democracy at the end of the fifth century. This makes sense because at this point *nomothetai* were dealing with new laws for the purpose of restoring democracy after Demetrius’ regime. Second, it suggests that what we are dealing with at this point is not legislation initiated by average citizens, but rather state-directed legislation, coming out steadily from the systematic work of a board and steadily posted and inscribed by a dedicated *anagrapheus* as is enacted. The kind of procedure this analysis of IG II<sup>2</sup> 487 suggests is therefore a special procedure of legislation, initiated for the purpose of enacting new laws that would undo or at least reform in democratic sense Demetrius of Phalerum’s legislative action. It is not an ordinary and rather cumbersome procedure for legislation such as the pre-322 one. Such a procedure would have hampered, rather than facilitated, the enactment of new laws. It is safer therefore to believe that the *nomothetai* were at this point a board of magistrates in charge of implementing new laws for the purpose of democratic restoration, much like the *nomothetai* of the late fifth-century, and not a body whose job was to listen to proposals

65. Cf. Rhodes (1972: 134–41; 1981: 599–605) and Henry (2002: 91–4).

for new laws and approve or reject them.<sup>66</sup>

The law of Sophocles about the philosophical schools, provides some further confirmation that the *nomothetai* were not in 307 the same institution as in the pre-322 democracy, and to find out who enacted the new laws proposed by this special board of *nomothetai*. According to Athenaeus (13.610e-f) Sophocles drove out the philosophers from Attica through a *psephisma*, which was then indicted by Philon, the pupil of Aristoteles. This would mean that the measure, according to Athenaeus a decree, was indicted through a *graphe paranomon*. At the trial Demochares, the nephew of Demosthenes, spoke in defence of the decree. Athenaeus' words are striking, because we would expect a measure such as Sophocles' to be enacted as a *nomos*, and not as a *psephisma*. In fact Pollux (9.42), when discussing the same measure, calls it a *nomos*. Diogenes Laertius (5.38) provides the fullest account, and states that 'Sophocles the son of Amphiclidides proposed a law that no philosopher should preside over a school except by permission of the Council and the Assembly, under penalty of death'. Diogenes seems to side with Pollux, and Athenaeus' *psephisma* to be simply a mistake. Yet Diogenes Laertius then continues: 'The next year, however, the philosophers returned, as Philo had prosecuted Sophocles for making an illegal proposal. Whereupon the Athenians repealed the law, fined Sophocles five talents, and voted the recall of the philosophers.' The so-called 'law' is repealed through a *graphe paranomon*, and not through a *graphe nomon me epitedeion theinai* as *nomoi* should be. It seems to be unclear in the sources whether this 'law' of Sophocles was in fact a *nomos* or *psephisma*, and the inconsistencies have been sometimes attributed to mistakes in the antiquarian tradition.<sup>67</sup> This is certainly possible, but we should countenance the possibility that the confusions may be due to the nature of the enactment itself. Similar confusions, as Hansen has clearly shown,<sup>68</sup> are very common in laws of the few years following the democratic restoration of 403, when a new legislative procedure that gave a board of *nomothetai* the task of voting on new laws had not yet been created, but *nomothetai* were nevertheless in charge of proposing the laws, which were then approved by the Assembly. Enactments of these years are often called intermittently in our sources *nomoi* and *psephismata*. We know from the

66. Errington (in Lambert 2004: 109 n. 84) suggests that a honorary decree (IG II<sup>2</sup> 433 + SEG 16.57) where the honorands are usually restored as *thesmothetai* may instead be concerned with *nomothetai*. He rightly points out that *thesmothetai* never seem to be honoured as a board. Lambert on the other hand observes that a honour for the *nomothetai* as the pre-322 board in charge of approving new laws is also unparalleled, and would be unexpected, as the *nomothetai* were strictly speaking a constitutionally superior body whose only job was to ratify or reject laws proposed by others. He allows however for the possibility that these may be *nomothetai* in the sense that they proposed laws, as Phanodemus *nenomotheteken* for the Penteteric Amphiaraiia (IG VII 4253) in 332/1. We would still however have to explain why more than one proposer is honoured in the same decree. On the other hand, if these are the *nomothetai* created in 307, then a collective honorary decree for the board as a whole would make sense, since these would be the *nomothetai* appointed for making proposals for new laws and submitting them to the Assembly for approval. On the other hand, the inscription is too fragmentary, and the dating too dubious, to afford us any safe conclusion on this matter.

67. Cf. e.g. O'Sullivan (2009: 214 n. 57) and Korhonen (1997: 78). Haake (2008: 95 and 101; cf. also 2007: 18 n. 26) also notices the inconsistencies in the evidence, and claims that the problem cannot be solved given the state of our sources.

68. Hansen (1978: 319-20).

fragment of Alexis that *nomothetai* were involved in the enactment of the 'law' of Sophocles. If they were involved as the body in charge of ratifying the law, as is often assumed, that the law would have contained the formula *dedochthai tois nomothetais* or something similar, and any confusion would be difficult to explain. If on the other hand the *nomothetai* were in charge of proposing new laws, which were later ratified by the Assembly, as in the late fifth century, and Sophocles was one of them, then it is clear why the law could be attacked through a *graphe paranomon* and mistaken for a *psephisma*.<sup>69</sup>

There is in fact some further evidence that laws (general enactments valid forever) were ratified by the Assembly in these years. When in 303 a court fined Cleomedon, a supporter of Demetrius, Demetrius sent a letter and had the fine cancelled. The Athenians then in the Assembly voted that no citizen should bring a letter from Demetrius, but Stratocles eventually passed a further measure which ordered that whatever Demetrius commands should be just before gods and men (Plut. *Dem.* 24.3-5). Stratocles' measure is quoted by Plutarch and has the formula *dedochthai toi demoi*, which characterizes this as a *psephisma*. Yet strictly speaking this would be a rule of general application (whatever he orders, to whomever, about whatever topic) meant to be valid for a long time, which in fact gives Demetrius full sovereignty over the Athenian Assembly, and forces the Assembly to ratify whatever he asks. The sort of law that should be ratified by the *nomothetai*, if the *nomothetai* were in charge of ratifying laws.<sup>70</sup> Another interesting enactment is that passed by the Athenians after the battle of Ipsos: they resolved in the Assembly that no king should be allowed in Athens (Plut. *Demetr.* 30.3). It is unclear whether this is a measure meant to be valid only in the context after the battle, or was supposed to be a general rule valid for the future, as most scholars hold.<sup>71</sup> If this second option is the case, we have here another example of 'law' that should have been enacted by the *nomothetai* and was instead passed in the Assembly. Another piece of evidence that could suggest that the *nomothetai* were at no point after the restoration of 307 given the task of ratifying new laws is IG II<sup>2</sup> 463, a decree of the Assembly usually dated to 307/6 and attributed to Demochares of Leuconoe that enacts a four-years long program of work on the walls of Athens and Peiraeus, lists specifications and assigns the work to contractors.<sup>72</sup> Such an enactment should not strictly speaking be a *nomos*, and yet a similar one passed in 337, IG II<sup>2</sup> 244, was passed as a law. It is difficult to tell why one was passed as a law and the other was not, and the reason may be that the older one contained financial arrangements that required approval by the *nomothetai*. On the other hand it is very unclear whether the reason for which IG II<sup>2</sup> 244 was enacted as a law is that it

69. Arnott (1996: 263) mentions the possibility that Sophocles may have been one of the *nomothetai*, and notes that Meinecke and Kock both thought that Alexis was referring (loosely) to Sophocles. Habicht (1997: 73) writes that the law was approved by the Assembly (which is probably correct) but does not discuss the problem.

70. About this episode cf. e.g. Habicht (1997: 78-9) and Paschidis (2008: 95-8), who reads this as an episode in a wider movement of resistance to Demetrius which developed in the first half of 303.

71. Cf. Ferguson (1911: 124-6); Habicht (1997: 81); Thonemann (2005: 64).

72. For the date see e.g. Maier (1959: 56-7), Merker (1986: 47-8); Dreyer (1999: 91, 124); Conwell (2008: 163-4).

contained financial arrangements, and moreover IG II<sup>2</sup> 463 is fragmentary, and there is no guarantee that it lacked similar provisions.<sup>73</sup> To sum up, the scanty evidence from these few 'laws' enacted as *psephismata* in the years following Demetrius Poliorcetes' restoration may not prove conclusively that laws were at this point enacted by the Assembly, and therefore the *nomothetai* did not ratify but rather proposed laws. Yet coupled with the evidence from IG II<sup>2</sup> 487 and the tradition about the law of Sophocles, they strongly suggest that this was the case.

A further element in the fragment of Alexis needs at least some tentative explanation: we have seen that this fragment attributes the initiative of the law of Sophocles against philosophical schools to Demetrius and the *nomothetai*. This, apart from confirming once again that their role was proactive rather than passive, suggests some kind of special link between the *nomothetai* and Demetrius, as if they acted on his orders, or their institution was somehow linked with his will.<sup>74</sup> Alexis may here be simply trying to tease Demetrius for meddling in the legislation of the city, and the *nomothetai* for being servile to his will. Yet we have seen above that a Macedonian king, Alexander, had in 334 imposed on the Chians the election of *nomographoi* to write and correct the laws towards a democratic constitution (Chios 32 = RO 84). Even more striking is the similarity of our *nomothetai*, according to the interpretation of their role I have offered, with the *nomographoi* imposed by Antigonus between 306 and 302 on the Teans and Lebedans (Teos 59): in the very same years of the action of the *nomothetai* in Athens Demetrius' father imposed that Teos and Lebedos should elect three *nomographoi* each, over forty years old, incorruptible. These men should swear an oath and then write (that is propose) the laws that they consider most expedient and fair to both cities for the new synoecized city within six months from their election. They should submit their proposals for laws to the *demos*, therefore to the Assembly, for ratification. If a citizen wants to propose a law, he must submit it to the *nomographoi*, who will then submit it to the Assembly, together with those of their own making. The laws about which the *nomographoi* disagree must be sent to Antigonus himself for review and approval. The laws that are approved by the Assembly should also be sent to the king, specifying which ones have been proposed by the *nomographoi* and which ones by other citizens, so that the king may punish the *nomographoi* if they have proposed bad laws.<sup>75</sup> The similarity of this procedure with what we have reconstructed of the role of the *nomothetai* in Athens between 307/6 and 301 is striking. The *nomographoi* in Teos and Lebedos (and presumably in Chios) proposed new laws, like our *nomothetai*, to effect the required change in the constitution, and then

73. Humphreys (2004: 122 n. 40) notes this, but does not discuss the circumstances. For discussions of this law see Maier (1959: 48-67); Conwell (2008: 161-5)

74. Haake (2008: 96) believes that Demetrius was mentioned only because without him freeing the city the democratic procedure that led to the approval of Sophocles' law would not have been possible. This explanation seems tenuous: the mention of the *nomothetai* as authors of the law is precise in institutional terms, and the connection of Demetrius with their action is explicitly stressed in verses 2 and 3 of the fragment. Demetrius is directly connected to the law of Sophocles as one of those who wanted it, not indirectly as the man who restored democracy and made discussion of such a law possible.

75. Cf. Bencivenni (2003: 169-202).

submitted their proposals to the Assembly for ratification. Theirs was not an ordinary magistracy, but rather a special one created to effect a major constitutional change imposed by a king. It has been argued that another board with similar functions was also imposed by Ptolemy on Cyrene (SEG 9.1), yet this time the officials are not called *nomographoi*, but *nomothetai* like in Athens.<sup>76</sup> We cannot exclude the possibility that something similar happened in Athens when Demetrius Poliorcetes ‘freed’ the city.<sup>77</sup> He may have restored democracy not simply by expelling Demetrius of Phalerum from Athens and giving back the Athenians their sovereignty. There is the possibility, and even the likelihood given the parallel with his father’s arrangements in Teos, that he actively restored the democracy by imposing the election of *nomothetai* that would write and correct the laws to perform this constitutional transition.<sup>78</sup>

To sum up, the *nomothetai* of these years, their last appearance in the record, were probably not the same as the pre-322 ones: they were not an ordinary magistracy, and they are not evidence that the restored democracy reinstated an ordinary separate procedure for enacting *nomoi*. *Nomoi* kept being enacted by the Assembly like *psephismata*. Accordingly it is safe to say that although the *graphe paranomon* was reintroduced by the restored democracy, the *graphe nomon me epitedeion theinai* was not. *Nomoi* and *psephismata* were enacted in the same fashion, and therefore did not require separate procedures for the lawcourts to rescind them. A law like the law of Sophocles could be repealed through a *graphe paranomon*. The *nomothetai* after 307, one of whom must have been Sophocles, were on the other hand a board of officials created to draft and submit to the Assembly for approval new laws for the purpose of restoring and when necessary

76. Cf. Laronde (1987: 85–128, 249–56).

77. Paschidis (2008: 97–98) lists IG II<sup>2</sup> 487 with the honours to Eucharis for publishing the laws of the *nomothetai* σκοπεῖν τῷ βουλευμένῳ καὶ μὴδὲ εἰς ἄγνοεῖν τοὺς τῆς πόλεως νόμους as one of the measures passed by the Athenians in early 303 in a climate of displeasure with Demetrius. He claims that the use of the expression σκοπεῖν τῷ βουλευμένῳ is a clear democratic gesture which implies a polemic against Demetrius’ authoritarian behaviour. Yet Alexis’ fragment is evidence that the *nomothetai*’s action was not viewed in itself as in opposition to Demetrius’ will, but rather as consistent with it. Moreover Paschidis overplays the reading of σκοπεῖν τῷ βουλευμένῳ, which would be in his interpretation an archaic democratic expression from the fifth century used against Demetrius Poliorcetes and his partisans. Its use after 307 can certainly be read as an implicit polemic against Demetrius of Phalerum’s regime (cf. Hedrick 2000a and 2000b: 331–3), yet it must be noted that the expression had a particular connection to *nomothesia*: it was used in the fourth-century law on *nomothesia* (cf. Dem. 24.18) about the advance publicity of new proposals in front of the monument of the Eponymous Heroes. If my reconstruction of the role of the *nomothetai* after 307 is correct, the expression is also consistent with the new *nomothesia* procedure after 307: the proposals of the *nomothetai* had to be ratified by the Assembly, and therefore advance publicity was necessary σκοπεῖν τῷ βουλευμένῳ. It is likely that such a provision was included in the new regulations of *nomothesia*, and therefore the *anagrapheus ton nomon* was praised for performing his role properly, rather than for giving to his action a particularly democratic slant, against Demetrius Poliorcetes and his partisans.

78. This would not be the only case of interference by Demetrius in the selection of Athenian magistrates in these years: an unpublished inscription reports that Adeimantus of Lampsakos, a *philos* of king Demetrius, was appointed by the king Athenian στρατηγὸς ἐπὶ τὴν χώραν two years in a row. Petrakos has published this sentence of the inscription and dated the two generalships to 306/5 and 305/4 (Petrakos 1999: 32–33 = SEG 49.4; cf. however Habicht 2006: 427 n. 38 who dates them instead to 294/3 and 293/2). Cf. Paschidis (2008: 89 n. 2 and 112–13 n. 4), and Wallace (2013 forthcoming) for a discussion of these generalships and more generally of the career of Adeimantus.



reform the constitution and the laws of the city, after ten years of often undemocratic legislation by Demetrius of Phalerum. Their creation is consistent with Athenian tradition, and their role resembles that of the *nomothetai* of the late fifth century, yet it is possible and even likely that they were created following an express order by Demetrius Poliorcetes after his arrival in Athens, much like the *nomographoi* were created in Chios and in Teos/Lebedos following orders from Alexander and Antigonos.

### Conclusions and the third century

It is possible to reconstruct the legislative procedures of early-Hellenistic Athens because there is some literary and epigraphical evidence for the twenty years following the end of the Lamian war. Regrettably nothing like this is possible for the third century: the literary sources do not provide evidence about legislative activity detailed enough to follow the evolution of the relevant procedures. The inscriptional record can afford us only very weak hypotheses based on the *argumentum ex silentio* that *nomothetai* are never again attested in Athens before the imperial age.<sup>79</sup> As I noted above, there is to my knowledge no third-century Athenian decree preserved on stone that in the fourth century would have been enacted by the *nomothetai*. On the other hand, it is still striking that no *nomothetai* are ever mentioned in any decree, either for the purpose of being honoured, nor of ratifying financial arrangements, or for any other reason. They completely disappear from the record, with one exception: SEG 37.89 (= Themelis 2002), a partially published inscription from the Brauron sanctuary prescribing an examination of some structures of the sanctuary to determine which ones need repairing. This measure is enacted by the *nomothetai*, in a fashion that resembles fourth-century laws, yet the first scholar to publish a photo of the inscription, Papadimitriou, dated the stone to the third century and Tracy has dated its writing to 200 BCE or even a bit later.<sup>80</sup> In fact, the mention of officials such as the Treasurers of the other Gods, absorbed by those of Athena in the 340's,<sup>81</sup> and the instructions given to the *apodektai* (never attested after 323/2) and to the *poletai* (never attested after 307/6),<sup>82</sup> together with 'connections to the inventories of Artemis Brauronia on the Athenian Akropolis and formal epigraphic evidence' make it virtually certain that the contents of this inscription predate the Lamian war.<sup>83</sup> If the writing on the stone must in fact be dated to the third century, then we

79. Cf. e.g. IG II<sup>2</sup> 1010, 1106, 1010, 1122, 1190, 3277, Agora 16.333.

80. Papadimitriou (*Ergon* 1961: 24-6) and Lambert (2007: 80 n. 38) for Tracy's opinion.

81. The exact date of the merger of the treasures of Athena and of the Other Gods, with the abolition of the Treasurers of the Other Gods, has been the subject of much debate: Woodward (1940: 404-6), Linders (1975: 59-61, 101 n. 149) and D. Harris (1991: 213 n. 165) date it to 346/5; Kirchner in the commentary to IG II<sup>2</sup> 1455 and Ferguson (1932: 117 n. 2) date it to 342/1. Papazarkadas (2011: 30) suggests 344/3 or early 343/2.

82. The last attestation of the *apodektai* is IG II<sup>2</sup> 365; of the *poletai* IG II<sup>2</sup> 463. We find both officials in a small (and very fragmentary) fragment of an inscription, SEG 25.187, which Meritt (*Hesperia* 37, 1968: 286 no. 23) dated to the early second century BCE. Yet the fragment, as P. J. Rhodes confirmed to me *per litteras*, has careless lettering and the dating is very dubious.

83. The case for a fourth-century dating is made extensively in a forthcoming paper by Elizabeth Bose. A summary of her arguments can be found as Bose (2009).



are here, as suggested by Rhodes, before a case of reinscription of a fourth-century law in the third century.<sup>84</sup>

*Nomothetai* never appear in Hellenistic inscriptions from the third century, and the *argumentum ex silentio*, however weak, suggests that no officials of this name were in charge of ratifying laws like before 322. My reconstruction of the changes in legislation in the last twenty years of the fourth century, if reliable, should strengthen this hypothesis: institutional change and development in Hellenistic Athens was tightly linked to the institutional memory of the Athenians. When they went back to democracy, or reformed their constitution in a democratic manner, their model of democratic constitution was not necessarily the democracy of the fourth century before the Lamian war. They returned, with some changes and some reforms, to the institutions of the last time they believed, or had come to believe, that they had been democratically governed. Their records of constitutional changes were imperfect, rudimentary and debatable; there was therefore no 'proper' democratic constitution, and often what had been considered democratic at a certain point came to be considered later as an oligarchic interlude.<sup>85</sup>

Accordingly, the Athenians did not in an antiquarian spirit reintroduce all the institutions of the classical democracy, and a particular institution would cease to be a realistic option as soon as it disappeared from or faded in the institutional memory of living and active Athenians. I have argued that *nomothesia*, as a complex procedure of legislation which took the responsibility of enacting *nomoi* from the Assembly and gave it to a board of *nomothetai*, and which involved a special *graphe nomon me epitedeion theinai* for *nomoi*, was never revived in the twenty (and therefore probably thirty) years following the defeat in the Lamian war. If this is the case, then it is likely that as a working procedure it had by then disappeared from the options open to an Athenian politician or reformer. Statesmen as old as Demochares might have remembered from their youth when laws were enacted differently from decrees, yet for most of their life and political career, spanning through several regimes that defined themselves as oligarchic or democratic, laws had been enacted by the Assembly. Fourth-century *nomothesia* was probably still an option in 307/6, and yet we have seen that the men who restored democracy chose not to return to it. It certainly was not an option in 287, thirty-five years after its last appearance. By then, for a separate procedure for enacting *nomoi* to be introduced, the Athenians would have needed reasons and considerations leading them almost to invent it anew. The sources provide no conclusive evidence indicating that *nomothesia* as a separate procedure for enacting *nomoi* did not exist in the third century, yet its revival is highly unlikely.

In conclusion given the largely positive account of fourth century *nomothesia* with which I have opened this article, a question remains to be answered: whether the twilight of *nomothesia* should be viewed as a step away from democracy and the reflection of a decline in democratic values.

84. Cf. Lambert (2007: 80 n. 38) for Rhodes' opinion. He has confirmed this opinion to me *per litteras*.

85. See e.g. Luraghi (2010) about this phenomenon.

*Nomothesia* as it was practised before the Lamian war was a remarkable achievement, which aimed to maintain a certain degree of stability in the laws by making them difficult to alter and to achieve consistency in the 'code' of laws. Finally, it provided a process of judicial review for the enactments, which strengthened both aspects. In doing this, it fulfilled to an impressive extent the requirements for achieving the 'rule of law' as the term is understood by modern theorists. To give one example, Raz argues that 'rule of law', when applied to lawgiving, involves 1) proactive rather than retroactive legislation, 2) laws that are stable, 3) clear procedures and rules for making laws, 4) courts having the power of 'judicial review' over the way in which the other principles are implemented.<sup>86</sup> With the twilight of *nomothesia* the Athenian state certainly went a few steps back in this respect, and legislation became more open abuse, the laws less consistent, and the constitution less secure. On the other hand, this apparent regression should be considered in fact an evolution in tune with the new contexts and times. First of all, to conserve a procedure like *nomothesia*, a state needs remarkable stability, which was impossible in the late fourth and third century, when the Athenian state was heavily dependent on what happened in the international scene. *Nomothesia* could preserve the constitution and the laws from internal disruption, but in 322 proved ineffective in preserving it from external shocks. The superior agility of the later legislative procedures allowed to the city to adapt more promptly to the requests of the new masters, and to revert as promptly to popular sovereignty and full suffrage when it was possible.

Second, there is evidence that despite the lack of a separate procedure for passing *nomoi*, the Athenians still preserved an understanding of the differences between the *nomoi* and *psephismata*. Honorary decrees for magistrates praise them for acting in accordance with the laws and with the decrees of the Council and the Assembly (e.g. *IG* II<sup>2</sup> 404; 674; 776; 1006; 1028), politicians are still praised for passing expedient laws (*Agora* 16.261.1), and the distinction between *nomoi* and *psephismata* seems to extend to the enactments of private associations, as its use in the language of religious associations shows.<sup>87</sup> The division and hierarchy of laws and decrees must have taken roots in the institutional ideology of the Athenians well beyond its actual implementation, and although it is hard to tell how this may have played out in practice, it is possible that the Athenians preserved an understanding of what a law should be about, and how widely it should apply, even when they dealt with it in the Assembly as with any decree, and acted accordingly.

Third, and most important, after regimes with limited political participation, the solitary legislative action of a man like Demetrius of Phalerum who put the Assembly under control of the *nomophylakes*, possibly even the royal imposition by the Polorcetes of *nomothetai* in charge of writing and correcting the laws, allegedly for the very purpose of restoring democracy, it is likely that any form of legislation which somehow limited the sovereignty of the Assembly would have been felt as intolerable by the

86. Raz (1977).

87. Arnaoutoglou (2003: 128-9)

Athenians. The very word *nomothetai* may have become suspect after its instrumental use under Demetrius of Phalerum and the Poliorcetes. In a way, the choice in the years 307-301 and in later democratic restorations not to recreate a board of *nomothetai* in charge of ratifying the laws was a choice for a more radically democratic constitutional form, against external influence and the previous limitation to the sovereignty of the *demos*.

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